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## *The Civil War and the Spirit of Compromise*

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As the American Revolution had been a struggle within a long-established colonial framework, so the Civil War was a struggle within a working federal system. The two events were to have analogous consequences in hedging in our political reflection, and in identifying the special institutions of this country with the normal conditions of life on this continent. Whatever theoretical debate went on, with few exceptions, was concerned not with the nature of governments but rather with the nature of this particular government.

That the Civil War was a federal conflict, like the colonial character of our Revolution, seems, perhaps, too obvious to require elaboration. But some of our ablest recent historians have given currency to an emphasis which has tended to obscure, or even to displace, the obvious.

In their brilliant *Rise of American Civilization*, Charles A. and Mary R. Beard christened the Civil War "The Second American Revolution." The phrase and the idea have had wide appeal. It has suited our current attitudes to suspect that the actual subject of debate was not the real cause of the conflict. The battle itself, supposedly, was but a symptom of deeper forces: "the social cataclysm in which the capitalists, laborers, and farmers of the North and West drove from power in the national government the planting aristocracy of the South . . . the social revolution was the essential, portentous outcome." Without denying that such a social revolution was taking place, we can recall that there was another side to the conflict. If we turn our attention from inevitable forces to human debate, we must look primarily

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at a different aspect of the struggle. This is only appropriate, since we are concerned with the place of theory in our conscious political life.

The name "The Second American Revolution" given by the Beards and their disciples, is misleading. They (and others who find the center of change in economic events) would thus emphasize the discontinuity of our history: the Civil War as a hiatus in our development, a gulf between an agricultural-commercial and an industrial society. But to those students who, like me, are impressed by the extraordinary continuity of our history, such an emphasis seems distortion. As we all know, the great economic developments are slow, evolutionary, and sometimes imperceptible; their triumphs are not self-announced in manifestoes. The Industrial Revolution was a matter of centuries, and the kind of revolution to which the Beards refer must also have been a matter of decades.

But political history (such events as go by the name of "revolution" and "civil war") has the abruptness of mutation. It is therefore in this area that it would be especially significant to note that what is called a great gulf in our history may not be so great as has been supposed. One of the remarkable characteristics of our Civil War, as contrasted with civil wars of recent European history (excepting possibly the English Civil War), is that ours did not significantly interrupt the continuity of our thinking about institutions.

From the point of view of political and constitutional thought, we might do better to call our Civil War "The Second War of Independence." I have already mentioned Guizot's remark that the English Revolution succeeded twice, once in England in the seventeenth century and a second time in America in the eighteenth. We might go further and say that, from the point of view of constitutional law and political theory, the Revolution occurred a third time, namely, in the middle of the nineteenth century. For the relation of the ancient rights of Englishmen to federalism, which was only partly redefined in the course of the American Revolution, was more extensively explored and settled during the Civil War.

That continuity of our political thought which, as we have seen, had been expressed in the legalistic character of the American Revolutionary debate was also expressed later in much of the argument over the Civil War. There is even less evidence here for the pattern which Carl Becker saw in the Revolution. The main current did not seem to rise above the "provincial" level of constitutionalism to the more "cosmopolitan" atmosphere of natural law. Indeed, we find something of the opposite of what Becker remarks as the increasing abstractness of Revolutionary debate. In the South at least, as the crisis proceeded the debate seemed to become more and more legalistic, reaching its climax actually after the war was over. The legal debate never rose to the realm of natural law, not even to the extent found in the American Revolution.

The North and the South each considered that it was fighting primarily for its legal rights under the sacred federal Constitution. A man like Thoreau

probably stood only for himself and a few fire-eating abolitionists. On neither side do we hear much of the sort of argument familiar in European civil wars: that the existing federal constitution was bad and ought to be changed, and that was what one should fight for. On the contrary, each side purported to represent the authentic original doctrine, to be *defending* the Constitution.

Calhoun, who was by far the most profound of the southern writers on the subject, shows this peculiarity. His major theoretical work, not published until after his death in 1850, consists of two parts: "A Disquisition on Government" and "A Discourse on the Constitution and Government of the United States." It is on these that his growing reputation as a political philosopher largely depends. These works taken together (as Calhoun intended that they should be) admirably illustrate the point of view I have been describing.

The "Disquisition," an essay of about a hundred pages, though starting from some general principles of psychology and political theory, is primarily a defense of Calhoun's principle of the "concurrent majority" and an exposition of his objections to governments based on the "numerical majority." In a closely reasoned argument, Calhoun points out the dangers of uncontrolled majority rule. The only safeguard, he insists, is a system of constitutionalism which will allow each separate interest a veto on all legislation to which it objects. Such a system, he urges, results in moderation and compromise and still can leave government strong enough to combat enemies from without. He supports his argument by the experience of Rome, Poland, and Great Britain.

"A Discourse on the Constitution and Government of the United States," a work about three times the length of the "Disquisition," is the sequel. In it Calhoun tries to show that

*it was the object of the framers of the constitution, in organizing the government, to give to the two elements [the states as units and the voting population], of which it is composed, separate, but concurrent action; and, consequently, a veto on each other, whenever the organization of the department, or the nature of the power would admit: and when this could not be done, so to blend the two, as to make as near an approach to it, in effect, as possible. It is, also, apparent, that the government, regarded apart from the constitution, is the government of the concurrent, and not of the numerical majority (Works, I, 181).*

By reference to the proceedings of the Philadelphia convention and of the ratifying conventions, Calhoun demonstrates that, through a happy coincidence, the true and original conception of the federal Constitution was actually nothing but a design for the attainment of his ideal government. The departure from his ideal, the gradual growth of a consolidated national government, and the development of means by which one section could dominate another were all to be explained as departures from the true intent of the Framers.

*To the one, or to the other,—to monarchy, or disunion it must come, if not prevented by strenuous and timely efforts. And this brings up the question,—How is it to be prevented? How can these sad alternatives be averted? For this purpose, it is indispensable that the government of the United States should be restored to its federal character. Nothing short of a perfect restoration, as it came from the hands of its framers, can avert them [Works, I, 381].*

This restoration was to be effected by getting rid of certain perversions which had been introduced after the adoption of the Constitution. Calhoun urges, for example, the repeal of Section 25 of the Judiciary Act of 1789, and of the Act of 1833; "the repeal of all acts by which the money power is carried beyond its constitutional limits"; the confining of the president to those powers expressly conferred on him by the Constitution and by acts of Congress; the return in practice to the original way of electing the president and vice-president.

Such means as these—together with a few reforms like the introduction of a plural executive—would, in Calhoun's phrase, "complete the work of restoration." We are never allowed to forget that what Calhoun aims at is not revolution but restoration.

### **A Conflict of Orthodoxies**

Here, once again, was a competition between constitutional orthodoxies. As often in American history, a great political conflict was taking the form not of a struggle between essentially different political theories but between differences of constitutional emphasis. There was a striking, if obvious, parallel to the epoch of the Revolution. But the South was now even more conservative than the Revolutionaries had been. It found no reason to issue a Declaration of Independence. The colonists had set themselves up as defenders of the British constitution and contended that it was not they but the parliament who were actually the revolutionaries. So now, champions of the South could—and did—argue that it was not they, but the northerners, who were, properly speaking, the revolutionaries. Each accused the other of seeking to overthrow the established doctrine of the federal Constitution, the ideas of the Founding Fathers.

The Civil War secessionist argument—like that of the Revolution—could be carried on in such a conservative vocabulary because both events were, theoretically speaking, only surface breaches in a firm federal framework. Because of this, they both implied, win or lose, the continued acceptance of the existing structure of local government. Thus in the Civil War southern partisans, like the Americans in the Revolution, could continue to profess loyalty to the theory of the Union. As a *New Yorker* championing the Southern cause declared in 1860:

*The South views the matter in the spirit of Patrick Henry. "The object is*

now, indeed, small, but the shadow is large enough to darken all this fair land." They can have no faith in men who profess what they think a great moral principle, and deny that they intend to act upon it. It was the principle of taxation without representation that the colonies resisted, and it is the principle of the "irrepressible conflict," based avowedly on a "higher law," that the South resists. She is now in the position of the Colonies eighty-four years ago, and is adopting the same measures that they adopted. . . . A prompt retreat from this dangerous agitation within the shadow of the Constitution, is the only means of realizing the rich future, which will be the reward only of harmony, good faith, and loyalty to the Constitution [Thomas P. Kettell, *Southern Wealth and Northern Profits* (New York, 1860), p. 5].

On the other side, Lincoln, in nearly every one of his principal speeches, appealed to the authentic Revolutionary tradition. His most succinct statement was, of course, in the familiar opening of the Gettysburg Address, to which I have already referred in another connection. But he rang all the rhetorical changes on this appeal, as, for example, in his speech at Peoria in 1854:

*Our republican robe is soiled and trailed in the dust. Let us repurify it. Let us turn and wash it white in the spirit, if not the blood, of the Revolution. Let us turn slavery from its claims of "moral right" back upon its existing legal rights and its argument of "necessity." Let us return it to the position our fathers gave it, and there let it rest in peace. Let us readopt the Declaration of Independence, and with it the practices and policy which harmonize with it.*

Statesmen of the North were perhaps more inclined to appeal to the Declaration of Independence, while those of the South leaned more heavily on the Constitution. But both had in common the assumption that the pretty homogeneous philosophy of the Founding Fathers was what they were being called upon to vindicate. Fitzhugh did, to be sure, characterize the Declaration as "exhuberantly false, and arborescently fallacious." Yet even the Declaration of Independence was by no means generally rejected by southern advocates. Some southerners, for example, Chief Justice Taney in the Dred Scott decision, even argued that their position had been well stated in the Declaration. They adduced historical proof (in my opinion convincing) that the authors of the sacred document had intended that Negroes be excluded from their professions of "equality." Another remarkable feature of the Dred Scott decision for us is the frankness with which it takes a preformation or a static view of the Constitution. Chief Justice Taney seemed to assume that the legal question of Negro status could be resolved by accurate historical definition of the original meaning of the Declaration of Independence and the Constitution, considered together.

Few documents could be more interesting in this connection than one which nowadays is almost never read. For there is probably no more authentic

index to the theoretical conservatism of the "rebel" cause than the Constitution of the Confederate States of America. President Jefferson Davis boasted that the document proved the "conservative" temper of the people of the Confederate States. Alexander Stephens, his vice-president, declared that the form of the document showed that "their only leading object was to sustain, uphold, and perpetuate the fundamental principles of the Constitution of the United States." Closely following the original in organization, the Confederate constitution is almost a verbatim copy of the federal Constitution.

Its differences consist mainly in that it incorporates into the body of the document some of the principal amendments to the federal Constitution (the Bill of Rights, for example, being absorbed into Art. I, sec. 9); and it explicitly resolves certain ambiguities (for example, those concerning slavery and the federal principle generally) in the sense which the South believed to have been the original intent of the authors. The Preamble, for example, reads:

*We, the People of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent Federal Government, establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish this Constitution for the Confederate States of America.*

It is of great significance that in our bloody Civil War the so-called "rebel" side produced, through two of its best minds, treatises on the origin and nature of our Constitution which deserve to stand, alongside *The Federalist* and Adams' *Defence of the Constitutions*, on the small shelf of basic books about the American political system. The first, of course, is Calhoun's "Discourse on the Constitution and Government of the United States" (1851), which I have already described. The second is Alexander H. Stephens' *Constitutional View of the Late War between the States* (1868–70).

We cannot be surprised that the South, weaker in economy and in arms, found an incentive to be stronger in legal debate. But it remains a curiosity of political thought, as well as a pregnant fact of American history, that the principal theoretical defense of the southern position should have been a treatise on the origin of the federal Constitution, produced actually after the South had lost the last battle. Stephens' work was dedicated to "All true friends of the Union under the Constitution of the United States, throughout their entire limits, without regard to present or past party associations." The conflict, Stephens emphasized, was not basically over slavery but over two "different and opposing ideas as to the nature of what is known as the General Government. The contest was between those who held it to be strictly Federal in its character, and those who maintained that it was thoroughly National." The work is historical: a documented demonstration that the Constitution was intended to set up a federal government.

We can begin to grasp the true proportions of what I have called the continuity of the history of the United States, as contrasted with that of the countries of western Europe, if we try to imagine the leader of a defeated party in any of the recent European civil wars producing a heavy scholarly treatise proving that he had been in the right *strictly from the point of view of constitutional theory*. George Fitzhugh in 1857 and Jefferson Davis in 1881 both earnestly wished for the "strength and perpetuity" of the Union.

In virtually every one of the recent domestic struggles in Europe, the conflict has been so basic that only one side could conceivably have set itself up as the champion of existing legal institutions. The other has proudly stood for a new concept of government, for a new constitution, and another basis of law. Hitler's cynicism toward the German constitution is typical of this frame of mind. Yet in the American Civil War, after hundreds of thousands of lives had been lost, both sides were still thinking on similar constitutional assumptions. An intelligent and realistic critic like Alexander Stephens still after the war considered it possible that his image of the original doctrine (that the Union was a federal and not a national government) might eventually prevail. This hope would have been hardly conceivable, had not both parties to the conflict accepted the same premises of political theory, had they not preserved a common devotion to a hypothetically perfect original theory. This is what I mean by the idea of "preformation."

For the reasons which I have mentioned, the legacy of the Civil War to American thought has been one of sectionalism and constitutional debate rather than of dogmatic nationalism and "return to fundamentals." The tendency of sectionalism has been to reinforce our awareness of variety within our national culture and of the desirability and inevitability of preserving it. The tendency of the continuous constitutional tradition has been to give the defeated cause, the South, a legitimate theoretical position within the federal system.

The South, except in its romantic literature of chivalry and mint juleps, is now no champion of a different concept of life but rather of a different constitutional emphasis. The South remains, as it is desirable that someone should always be, champion of the states'-rights, local-autonomy principle of our federal Constitution. The South can still debate about what it once gave its lives to defend, for it has never lost essential devotion to the constitutional spirit and its pure original image. What Lincoln called "the spirit of concession and compromise, that spirit which has never failed us in past perils, and which may be safely trusted for all the future"—that spirit can survive precisely because the Civil War was poor in political theory. Notwithstanding the abolitionists and people like Garrison who wished to burn the Constitution, the war did not represent a quest for a general redefinition of political values.

Whatever the crimes, the senseless bitterness, that were visited on the South in the era of reconstruction, they were committed in a vindictive or

narrowly provincial spirit. The triumph of the national emphasis in the federal structure did not carry with it victory of a nationalist philosophy. In Lincoln's phrase, "the Union"—not any self-conscious national culture—was what was to be preserved. This distinguished him sharply from his contemporaries like Bismarck and Cavour. The remarkable reintegration of the South into our constitutional system is the best evidence of the community of certain assumptions. The Civil War emerged, then, as a struggle over complicated matters, on which everyone knew there had been a long series of compromises, beginning with the Declaration of Independence and the Constitution themselves. Such a controversy could have happened only within the framework of going federal institutions.

Not the least remarkable feature of the Civil War—apart from the fact that it occurred at all—is that it was so unproductive of political theory. This, the bloodiest single civil war of the nineteenth century, was also perhaps the least theoretical. The sectional character of the conflict had tended to make sociology—the description of things as they were—take the place of the uncharted exploration of things as they ought to be. It also prevented the crisis from propagating panaceas. This was another example of the recurrent tendency in American history to identify the "is" with the "ought," to think of values and a theory of society as implicit in facts about society. The era was strikingly lacking in romanticism of the Rousseauistic brand. The romantics of the day were the Thaddeus Stevenses—the bearers of fire and sword.

At the same time, the federal character of the struggle, the fact that it took place within a functioning federal order, confined much of the theoretical discussion within the area of constitutional law, of the search for the true original image of the Constitution. This, too, discouraged American thinkers of the age (excepting a vagrant Thoreau) from making confusion in the market place an excuse for going off into the solitude of the woods to rethink the whole problem of institutions. The sense of "givenness" was reinforced. In this case it meant the empirical tradition, the reliance on constitutionalism, and an unwillingness to remake institutions out of whole cloth.

The continuity of American political thought—which included the American way of not philosophizing about politics—was to stay. The mere fact that the nation had survived the ordeal of civil war seemed itself to prove the strength of the thread which bound the present to the past and to confirm the common destiny of the nation.

#### SUGGESTIONS FOR FURTHER READING

Charles and Mary Beard's description of the Civil War as a "revolution" is supported by Louis M. Hacker, *The Triumph of American Capitalism* (New York, 1940). Arthur C. Cole finds the Civil War to be *The Irrepressible Conflict, 1850–*



1865 (New York, 1934), and Robert R. Russel describes some Southern economic grievances in his *Economic Aspects of Southern Sectionalism, 1840-61* (Urbana, Ill., 1924).

Arthur Schlesinger, Jr., has argued that slavery was a fundamental moral issue dividing the sections, an issue that could not be compromised. See his "The Causes of the Civil War: A Note on Historical Sentimentalism," *Partisan Review*, XVI (October 1949), pp. 969-81. Avery Craven, in *An Historian and the Civil War* (Chicago, 1964) and *The Coming of the Civil War* (Chicago, 1957), takes a very different view. He argues that prejudices, misconceptions, and emotionalism blinded Americans. When political issues became moral absolutes, compromise became impossible. David Donald has argued perceptively against both the Craven and the Beards' points of view in "An Excess of Democracy: The American Civil War and the Social Process," Chapter XI of his *Lincoln Reconsidered* (New York, 1961). A discussion of Southern society and the sources of its ideology that would support Eric Foner's essay is Eugene D. Genovese, *The Political Economy of Slavery* (New York, 1965).

David Donald, *Liberty and Union: The Crisis of Popular Government* (Boston, 1978), tells the story of these years of crisis mostly in terms of harmony and consensus. David M. Potter, *The Impending Crisis, 1848-1861* (New York, 1976), is a fine, balanced survey of the coming of the Civil War which traces the growing conflicts stemming from Northern and Southern nationalism, slavery, and political differences. Roy F. Nichols, *The Disruption of American Democracy* (New York, 1948), sketches the political realignments arising from sectional conflicts, 1856-1861; he finds the heightened emotionalism of the times rather than fundamental class or ideological differences to be the cause of this political disruption. William L. Barney, *The Road to Secession* (New York, 1972), describes the course of secession and the conflicts over this issue in the South.

No subject has received more attention than the Civil War; the bibliography is endless. Those wishing to delve into the literature may start with Thomas J. Pressly, *Americans Interpret Their Civil War* (Princeton, 1954). A more recent survey containing a number of perceptive insights is Eric Foner, "The Causes of the American Civil War: Recent Interpretations and New Directions," *Civil War History*, XX (September 1974), 197-214. A convenient collection of primary and secondary sources on the war may be found in Edwin C. Rozwenc, ed., *The Causes of the American Civil War* (Boston, 1972) and Kenneth M. Stampp, *The Causes of the Civil War* (New York, 1974).

\* Available in paperback edition.